

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1454

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

UNITED STATES OF AMERICA, :

Appellee, :

- v - :

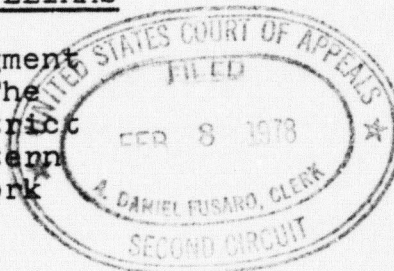
CHARLES WILLIAMS, ROBERT :
MC CRAY, :

Appellants. :
-----X

B
P/S

APPENDIX TO BRIEF FOR
APPELLANT CHARLES WILLIAMS

Appeal From A Judgment
Of Conviction In The
United States District
Court For The Eastern
District Of New York



Albert J. Brackley, Esq.
186 Joralemon Street
Brooklyn, New York 11201
Attorney for Appellant
Charles Williams

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>Page</u>
Docket Entries	A1
Indictment	A9
Charge of the District Court	A13
Opinion re Milwaukee Robbery	A83

MEANEOR No. 207
FELONY Fel 2

1
District Office

Disp./Sentence

CHARLES WILLIAMS
(LAST, FIRST, MIDDLE)

JUVENILE

3 22
No. of Offs

U.S. MAG.
CASE NO.

184371, 2113(a)(d) & 2 OFFENSES CHARGED

ORIGINAL COUNTS

Did conspire to rob a series of
banks and use of a dangerous weapon

BAIL • RELEASE

☐ Denied ☐ AMT ☐ Fugitive
☐ Set ☐ Pers Re
☐ \$ 000 ☐ PSA
☐ Date ☐ condition
☐ 10% Depo
☐ Surety Bc
☐ Bail Not Made ☐ Collateral
☐ Status Changed (See Docket) ☐ 3rd Pny Cust O

H. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custody Began	High Risk Date	Information	1st Plea
Summons Served	Indict. Waived	4/21/77	6/6/77
First Appearance	In Charging District	Superseding ☐ Indict/Info	Now Dire Trial Began Trial Ended
		Final Plea	NG G NOL G. Plea W/Drawn

SENTENCE:
Disposition of Charges
☐ Convicted ☐ On All Ch.
☐ Acquired ☐ On Lesser Offense(s)
☐ Dismissed: ☐ WOP: ☐
☐ On Government's Motion

MAGISTRATE	
Search Warrant ☐ Issued ☐ Return	DATE
Summons ☐ Issued ☐ Served	INITIAL/NO.
Arrest Warrant Issued	INITIAL APPEARANCE DATE
COMPLAINT	PRELIMINARY EXAMINATION OR ☐ REMOVAL HEARING
OFFENSE (In Complaint)	DATE Scheduled DATE Held
	WAIVED ☐ NOT WAIVED ☐
	INTERVENING INDICTMENT
	Tape Number
	OUTCOME: ☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.

J. CARTER

ATTORNEYS

Defense ☐ CJA ☒ Ret ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CO

Robert Sosnick Albert Brackley (assigned)
125-10 Queens Boulevard 186 Joralemon St
Kew Gardens, NY Bklyn, NY. MA5-2588
(212)-275-0200

* Show last names and suffix numbers of other defendants on same indictment/information.

McCRA Y 2; KING 3, BELL 4; GRAHAM 5 HAIRSTON 6

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUS... DELAY (a) (b) (c)
3-22-77		Before CATOGGIO, J - Indictment filed - ordered sealed by the Court. Bench Warrant ordered.	
4-13-77		Before BRAMWELL, J - Case called - sealed indictment ordered opened by the Court. xxxx May 20, 1977 for motions - case set down for trial June 6, 1977	
4/18/77		By Costantino, J - writ issue.	
4.21.77		By Bramwell, J.- W: t Issued.	
4/21/77		Before Bramwell, J case called deft Mullins present deft counsel not present case adjd to 4/28/77 for all purposes. JJJ	
4/21/77		Before Bramwell, J - case called deft present w/o counsel court enters a plea of not guilty. Case adjd to 4/27/77 to obtain counsel bail fixed at \$500,000.00 surety bond. JJJ	
4-22-77		Letter from deft dtd 4-15-77 filed.	
4.26.77		Writ of Habeas Corpus Ad Prosequendum returned and filed. Unexecuted.	

over.....

DATE

IV. PROCEEDINGS (continued)

PAGE TWO

V. EXCLUSIONS

DATE	(DOCUMENT NO.)	Interval Section 1 (a)	Start Date and Date (b)	Lib Code (c)	Time Days (d)	as U.S. (e)
4.26.77	Writ of Habeas Corpus Ad Prosequendum returned and filed. Executed.					
4.27.77	Before Bramwell, J.- Case Called. Deft. & Counsel present. Motions by 5.20.77 and Case adjd. to 6.6.77 for Trial.					GP
4.27.77	Notice of Appearance filed.					GP
5/20/77	Letters of 5/14/15/77 (Charles Williams) to Bramwell, J in reference to motion-for reduction of sentence.jlj					GP
5/25/77	Before Bramwell, J-case called-deft & counsel present case adjd to 5/26/77.jlj					
6-6-77	Before Bramwell, J - case called - deft present - atty not present - case adjd to June 20, 1977 for trial.					
6-16-77	Motion for Bill of Particulars, and further Discovery; Motion to suppress any evidence filed(forwarded to Chambers)					
6-20-77	Before BRAMWELL, J - case called - deft & counsel present - hearing on motion to suppress begun - Decision reserved - case adjd to June 21, 1977 at 2 PM.					
6-21-77	By Bramwell, J - Writ Issued.					
6.21.77	Before Bramwell, J.- Case Called. Deft. & Counsel present. Hearing continued to 6.22.77 at 10:45 A.M.					
6-22-77	Before Bramwell, J - case called - deft & counsel present. Deft withdraws his motion to suppress through his attorney Anthony Lombardino. Decision reserved on all motions.					GP
6.23.77	Before Bramwell, J.- Case Called. Deft. & Counsel present. Hearing on Motion to suppress continued. Case adjd. to 6.27.77 at 10:00 A.M. for Trial. Hearing concluded.					
6-27-77	Before Bramwell, J - case called - deft & counsel present. Trial ordered and begun. Jurors selected and sworn - trial contd to June 28, 1977.					GP
5-28-77	Before Bramwell, J - case called - deft present with atty -Anthony Lombardino - trial resumed - Juror #5 excused by all parties on consent. Alt.Juror #1 Dorothy Wright become Juror #5 - defts motion for mistrial denied - trial contd to June 29, 1977.					
6/29/77	Before Bramwell, J-case called-deft & counsel present trial resumed-trial contd to 6/30/77.jlj					
6-30-77	Before BRAMWELL, J. - Case called. Defts & counsel present. Trial resumed. Trial continued to 7-5-77 at 10:30 A.M. mm					
7/1/77	Writ of habeas corpus ret & filed executed.jlj					
7.05.77	Before Bramwell, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 7.06.77 at 10:30 A.M.					
7/6/77	Before Bramwell, J-case called-deft & counsel present trial resumed-trial contd to 7/7/77.jlj					GP
7/7/77	Before Bramwell, J-case called-deft & atty present-trial resumed-trial contd to 7/11/77.jlj					
7/12/77	Writ of habeas corpus ret & filed executed.jlj					

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

GP

GP
GP

GP

GP

GP

W
Grand
juror
3181

77
Yr.157
Docket No.1
Def.

CHARLES WILLIAMS

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
7/11/77	Before Bramwell, J-case called-deft & counsel present trial resumed-both defts waive making motions at the close of govts case-trial contd to 7/12/77.jlj				
7-12-77	Before Bramwell, J - case called - deft & atty present - trial resumed - trial contd to & July 13, 1977.				
7/13/77	Before Bramwell, J-case called-deft & counsel present trial resumed-order of sustenance signed-jury came into court at 7:00 p, & sent home to return 7/14/77 trial contd.jlj				
7/13/77	By Bramwell, J-order of sustenance filed.jlj				
7-18-77	3 transcripts filed (one dated June 21 , July 5 and July 6, 1977 respectively)				
7-18-77	Before Bramwell, J - case called - deft & counsel present - trial resumed - Jury came into court and rendered a verdict of guilty as to deft Williams on counts 1 to 5 incl. Jury polled - all motions re by Sept. 16, 1977- Jury discharged - bail contd and sent. adjd without date - trial concluded.				
7-26-77	4 transcripts filed, dated July 11, July 13, July 15 and July 18, 1977.				
7.26.77	Stenographer's Transcript dated June 29th, 1977 filed.				GP
7.26.77	Stenographer's Transcript dated June 30th, 1977 filed.				GP
7.26.77	Stenographer's Transcript dated June 20th, 1977 filed.				GP
7.26.77	Stenographer's Transcript dated June 23rd, 1977 filed.				GP
7.26.77	Stenographer's Transcript dated June 28th, 1977 filed.				GP
7.26.77	Stenographer's Transcript dated June 22nd, 1977 filed.				GP
8-4-77	Letter filed from deft received from Chambers re consolidation of cases etc. 77 CR 158 relates -deft is to be produced in court forthwith at 10 am - 8-5-77 Clerk to notify the Marshal & counsel - So Ordered. parties notified. by J.Weinstein.				
8-8-77	Before Caden, J - case called - deft present - Mr. Brackley present in court & assigned counsel for deft.				
9.02.77	Stenographer's Transcript dated July 12th, 1977 filed.				GP
9.15.77	Before Bramwell, J.- Case Called. Deft. & Counsel present. Deft's. application to have his counsel relieved - Motion denied. The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of five (5) years on Count one (1), for a period of twenty (20) years on Counts two (2) and three (3), and for a period of twenty-five (25) years on Counts four (4) and five (5). Sentences on Counts four (4) and five (5) are to run consecutive with sentences in Counts two (2) and three (3). Sentence on Count one (1) is to run concurrent with sentences on Counts two (2), three (3), four (4) and five (5). The sentence imposed herein shall be consecutive to any Federal or State sentence which this defendant may				

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	(Document No.) continuation..... now be subject to or for which trial may presently be pending. The defendant is advised of his right to appeal in forma pauperis pursuant to Rule 32(a)(2) F.R.C.P.				
9.15.77	Judgment and Commitment filed. Certified Copies to Marshal and Probation.				gp
9-19-77	Notice of appeal filed - docket entries and duplicate of notice mailed to the court of appeals.				gp
AO 256A		Interval (per Section II)		Start Date End Date	Ltr. Total Code Days

U.S. TITLE/SECTION
18:371, 2113(a)(d) & 2
OFFENSES CHARGED
Did conspire to rob a series of banks and use of a dangerous weapon
ORIGINAL COUNTS
5
7/18/77
SUPERSEDING COUNTS

U.S. MAG
CASE NO.
BAIL • RELEASE
AMT
Set
Fugitive
Pers. Recog
PSA
Conditions
10% Deposit
Surety Bond
Collateral
3rd Pny Cust
Other
Status Changed (See Docket)
Bail Not Made

II. KEY DATES & INTERVALS
ARREST or
U.S. Custody Began
Summons Served
First Appearance
INDICTMENT
High Risk Date
Information
3-22-77
Indict. Waived
In Charging District
Superseding
Indict/Info
ARRAIGNMENT
4/15/77
1st Plea
Final Plea
TRIAL
Trial Set For
6/6/77
G. Plea
W/Drawn
NOL
Trial Began
6/27/77
Trial Ended
7/18/77
SENTENCE
Disposition of Charges
7-8-77
9.19.77
On All Charges
On Lesser Offense(s)
Dismissed
WOP
WP
On Government's Motion

Search Warrant
Issued
Return
Summons
Issued
Served
Arrest Warrant Issued
COMPLAINT
OFFENSE (In Complaint)
DATE
INITIAL/NO
MAGISTRATE
INITIAL APPEARANCE DATE
PRELIMINARY EXAMINATION
OR
REMOVAL HEARING
WAIVED
NOT WAIVED
INTERVENING INDICTMENT
Tape Number
OUTCOME
DISMISSED
HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst

zachary Carter

ATTORNEYS

COURTENAY L. WILTSHIRE, ESQ. James Bing, Esq
188 Montague Street Chase Manhattan
Brooklyn NY 11201 Plaza, New York NY
10005 422 - 3000

* Show last names and suffix numbers of other defendants on same indictment information

WILLIAMS 1; KING 3; BELL 4; GRAHAM 5; HAIRSTON 6

DATE DOCUMENT NO. PROCEEDINGS
3-22-77 Before CATOGGIO, J - Indictment filed - ordered sealed by the Court. Bench Warrant ordered./Issued.
4-13-77 Before Bramwell, J a case called - Sealed Indictment Ordered opened by the court - May 20, 1977 for motions - Trial set down for June 6, 1977
4-15-77 Bench warrant retd and filed - executed.
4-15-77 Before Costantino J - case called - deft present - deft arraigned and the court enters a plea of not guilty on his behalf. Case adjd to 4-18-77 for all purposes. Bail set at \$100,000 surety bond.
4/18/77 Before BRAMWELL, J - Case called. Deft present without counsel. Court assigns counsel for deft. May 20, 1977 for motions and case adjd to 6/6/77 for trial. Bail continued.
4/18/77 By BRAMWELL, J. - Order appointing counsel filed.
4/18/77 Financial affidavit filed.
6-6-77 Before Bramwell, J - case called - deft & atty C.Wiltshire present - court relieves Mr.Wiltshire as counsel - case adjd to June 20, 1977 for trial.

DATE		IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY		Interval Start Date (A)	Excludable End Date (B)	LR Code (C)	Dis- code (D)
6/8/77		Before BRAMWELLJ - Case called. - Deft & Counsel present. Case adjd to 6/20/77 for trial.							
6/8/77		Notice of appearance filed.							
6/10/77		Before Bramwell, J-case called-deft & counsel present motion argued-motion granted.jlj							
6-20-77		Before Bramwell, J - case called - deft & counsel present - hearing on motion to suppress begun - decision reserved. case adjd to June 21, 1977 at 2 PM.							
6-21-77		By Bramwell, J - Writ issued.							
6.21.77		Before Bramwell, J.- Case Called. Deft. & Counsel present. Hearing continued to 6.22.77 at 10:45 A.M.							
6-22-77		Before Bramwell, J. case called - deft & atty present - Deft moves for a severance - hearing contd to 6-23-77.							gp
6.23.77		Before Bramwell, J.- Case Called. Deft. & Counsel present. Hearing on Motion to suppress continued. Case adjd. to 6.27.77 at 10:00 A.M. for Trial. Hearing concluded.							gp
6-27-77		Before Bramwell, J - case called. - deft & counsel present - trial ordered and begun - Jurors selected and sworn - trial contd to June 28, 1977.							
6-28-77		Before Bramwell, J - case called - deft & atty James Bing present - trial resumed - Juror #5 Mr.Cassese excused by all parties on consent. Alt.Juror #1 Dorothy Wright becomes Juror #5 - defts motion to suppress motion denied with leave to renew at a later time -defts motion for Mis-trial etc. motion denied - trial contd to June 29, 1977.							
6/29/77		Before Bramwell, J-case called-deft & counsel present trial resumed-trial contd to 6/30/77.jlj							
6-30-77		Before BRAMWELL, J. - Case called. Defts & counsel present. Trial resumed. Trial continued to 7-5-77 at 10:30 A.M. mm							
7-1-77		Voucher for expert services filed and forwarded for payment.							
7.5.77		Voucher for Expert Services filed and forwarded to Washington for Payment. (V# 93600)							gp
7.05.77		Before Bramwell, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 7.06.77 at 10:30 A.M.							gp
7/6/77		Before Bramwell, J-case called-deft & counsel present trial resumed-trial contd 7/7/77.jlj							
7/7/77		Before Bramwell, J-case called-deft & counsel present trial contd to 7/11/77.jlj							
7/8/77		Voucher for expert services filed and forward to admin office for payment.jlj							
7/11/77m		Before Bramwell, J-case called-deft & counsel present trial resumed-both defts waive making motions at the close of govts case-trial contd to 7/12/77.jlj							
7-12-77		Before Bramwell, J - case called - deft & counsel present - trial resumed - court charges Jury at 4:25 PM							
FINE AND RESTITUTION PAYMENTS									
DATE		RECEIPT NUMBER	C.D. NUMBER	DATE		RECEIPT NUMBER	C.D. NUMBER		

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs ROBERT MC CRAY

77 15

Yr. | Dockr

DATE	PROCEEDINGS (continued)	V. EXCLUDED	
	(Document No.)	(a)	(b)
7/13/77	to 6:10 PM. alt. Jurors discharged - Jury retires for deliberation at 6:15 PM -Jury came into court at 7:30 PM and sent home - trial contd to 7-13-77.		
7/13/77	Before Bramwell, J-case called-deft & counsel present trial resumed-order of sustenance signed-jury came into court at 7:00 pm & sent home to return 7/14/77 trial contd.jlj		
7-18-77	By Bramwell, J-order of sustenance filed.jlj		
7-18-77	Before Bramwell, J - case called - trial resumed - Jury renders a verdict of guilty on counts 1 to 5 incl. Jury polled - all motions by 9-16-77. Jury discharged - bail contd and sentence adjd without date. trial concluded.		
7-18-77	3 transcripts dated June 21, July 5 and July 6, 1977 respectively.		
7-19-77	Voucher for expert services filed,and forwarded for payment.		
7-26-77	4 transcripts filed dated July 11, July 13, July 15 and July 18, 1977.		
7.26.77	Stenographer's Transcript dated June 29th, 1977 filed.		
7.26.77	Stenographer's Transcript dated June 30th, 1977 filed.		
7.26.77	Stenographer's Transcript dated June 28th, 1977 filed.		
7.26.77	Stenographer's Transcript dated June 23rd, 1977 filed.		
7.26.77	Stenographer's Transcript dated June 20th, 1977 filed.		
7.26.77	Stenographer's Transcript dated June 22nd, 1977 filed.		
9.02.77	Stenographer's Transcript dated July 12th, 1977 filed.		
9.19.77	Before Bramwell, J.- Case Called. Deft. & Counsel present. The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years on Count one (1). On Counts two (2) and three (3), general sentence to cover both Counts for imprisonment for a period of twenty (20) years. ON Counts four (4) and five (5), general sentence to cover both Counts for imprisonment for a period of twenty (20) years. The sentence imposed in Count four (4) and five (5) shall be consecutive to the general sentence imposed in Counts two (2) and three (3). The sentence imposed in Count one (1) shall be concurrent to all other Counts in this indictment. The sentence imposed herein shall be consecutive to any Federal or State sentence which the defendant may now be subject to or for which trial may presently be pending. The defendant was advised of his right to appeal in forma pauperis without fee.		and
9.19.77	Judgment and Commitment filed. Certified Copies to Marshal and Probation.		

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

A8

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
	(Document No.)	(a)	(b)	(c)	(d)
9.22.77	Certified Copy of Judgment and Commitment returned and filed from Marshal. Deft. delivered on 4.15.77 to M.C.C., New York. NOTICE OF APPEAL FILED. Duplicate docket entries, to C of A with form A and notice. mg				
9-28-77					gp

TRP:ZWC:mb
P#771,163

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA

-against-

CHARLES WILLIAMS aka "Chaz"
ROBERT MCGRAY aka "Sabu"
CURTIS KING
RONALD BELL
GARY GRAHAM and
ROBERT HAIRSTON,

Defendants.

----- X
THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 1st day of January 1976 and the 31st day of May 1976, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants

CHARLES WILLIAMS aka "Chaz"
ROBERT MCGRAY aka "Sabu"
CURTIS KING
RONALD BELL
GARY GRAHAM and
ROBERT HAIRSTON, ①

did knowingly and wilfully conspire to commit offenses in violation of Title 18, United States Code, Sections 2113(a) and (d), by conspiring to rob by force, violence and intimidation, a series of banks, within the Eastern District of New York and elsewhere the deposits of which banks were insured by the Federal Deposit Insurance Corporation.

In furtherance of said conspiracy and to achieve the objectives thereof, the defendants

CHARLES WILLIAMS aka "Chaz"
ROBERT MCGRAY aka "Sabu"
CURTIS KING
RONALD BELL
GARY GRAHAM and
ROBERT HAIRSTON

committed the following

FILED
IN CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.

★ MAR 22 1977 ★

TIME A.M. _____
P.M. _____

INDICTMENT

Cr. No. _____
(T.18, U.S.C., §371,
§2113(a), §2113(d) and
§2)

77CR 157

①

-2-

OVERT ACTS

1. In or about the later part of January 1976, within the Eastern District of New York, the defendants, CHARLES WILLIAMS, ROBERT MCGRAY aka "Sabu" and CURTIS KING had a series of meetings during which they discussed and rehearsed robbing banks.

2. On or about February 9, 1976, the defendants CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu", CURTIS KING, RONALD BELL and GARY GRAHAM robbed the European-American Bank, located on Brush Hollow Road in Westbury, New York.

3. On or about March 11, 1976, the defendants CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu", CURTIS KING and ROBERT HAIRSTON robbed the Kilbourne State Bank, located at 6055 West Lisbon Avenue, in Milwaukee, Wisconsin.

4. On or about May 6, 1976 the defendants, CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu" and CURTIS KING robbed the Nassau Savings and Loan Association located at 77 Lincoln Avenue in Rockville Centre, New York. (Title 18, United States Code, Section 371.)

COUNT TWO

On or about the 9th day of February, 1976, within the Eastern District of New York, the defendants CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu", CURTIS KING, RONALD BELL and GARY GRAHAM, did knowingly and wilfully by force, violence and intimidation, take from the person and presence of the employees of the European-American Bank, Brush Hollow Road, Westbury, New York, approximately Twenty-Three Thousand Three Hundred Fifty Dollars (\$23,350) in United States currency, which money was in the care,

-3-

custody, control, management and possession of said bank, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, Section 2113(a) and Section 2).

COUNT THREE

On or about the 9th day of February, 1976, within the Eastern District of New York, the defendants, CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu", CURTIS KING, RONALD BELL and GARY GRAHAM, did knowingly and wilfully, by force, violence and intimidation, take from the person and presence of employees of the European-American Bank, Brush Hollow Road, Westbury, New York, approximately Twenty-Three Thousand Three Hundred Fifty Dollars (\$23,350) in United States currency, which money was in the care, custody, control, management and possession of said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, and in the commission of this act and offense the defendants CHARLES WILLIAM aka "Chaz", ROBERT MCGRAY aka "Sabu", CURTIS KING, RONALD BELL and GARY GRAHAM did assault and place in jeopardy the lives of said bank employees as well as the lives of other persons present, by use of a dangerous weapon. (Title 18, United States Code, Sections 2113(d) and 2).

COUNT FOUR

On or about the 6th day of May, 1976, within the Eastern District of New York, the defendants CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu" and CURTIS KING did knowingly and wilfully, by force violence and intimidation take from the person and presence of the employees of the

-4-

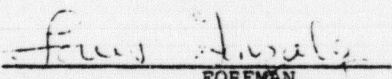
Nassau Savings and Loan Association, 77 Lincoln Avenue, Rockville Centre, New York, approximately Twenty-Four Thousand, Fifty Three Dollars (\$24,053) in United States currency, which money was in the care, custody, management and possession of said bank, the deposits of which were then and there insured by the Federal Savings and Loan Insurance Corporation. (Title 18, United States Code, Sections 2113(a) and 2).

COUNT FIVE

On or about the 6th day of May, 1976, within the Eastern District of New York, the defendants CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu" and CURTIS KING did knowingly and wilfully, by force, violence and intimidation, take from the person and presence of employees of the Nassau Savings and Loan Association, 77 Lincoln Avenue, Rockville Centre, New York, approximately Twenty-Four Thousand, Fifty-Three Dollars (\$24,053) in United States currency, which money was in the care, custody, control, management and possession of said bank, the deposits of which bank were then and there insured by the Federal Savings and Loan Insurance Corporation, and in the commission of this act and offense the defendants CHARLES WILLIAMS aka "Chaz", ROBERT MCGRAY aka "Sabu", and CURTIS KING did assault and place in jeopardy the lives of said bank employees as well as the lives of other persons present, by use of a dangerous weapon. (Title 18, United States Code, Sections 2113(d) and 2).

A TRUE BILL


DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK


FOREMAN

7 1 but I wouldn't say he is frowning. There are times
2 when somebody might say I am not very pleasant looking
3 but I am not frowning. Now, what else can I say about
4 that?

5 THE COURT: Thank you. All right. Are we
6 ready to proceed?

7 MR. LOMBARDINO: Yes, your Honor.

8 MR. BING: Yes, your Honor.

9 THE COURT: All right. Bring in the jury.

10 (The jury entered the courtroom at 4:25 p.m.)

11 THE COURT: All right.

12 Ladies and Gentlemen, I am now going to give
13 you the Court's charge with respect to this case, and
14 you will have to be a little patient and bear with me,
15 but what I am giving you at this time, these instruc-
16 tions, I must give them to you.

17 Mr. Foreman and Ladies and Gentlemen of the
18 jury:

19 We now come to the final stage of the proceed-
20 ings. The Court will now charge you on the law to be
21 applied on the facts in the case. As you may recall
22 I initially gave a pre-charge as to the manner in
23 which the case would be presented to you. I told you
24 that most of the evidence in the case would come in the
25 form of the testimony of witnesses, and that you were to

Charge of the Court

pay special attention to the manner in which the witnesses testified.

I believe I also instructed you that you would be the judges of the facts in the case, that being your sole province, and that your recollection of the facts after having heard all of the evidence in the case, the testimony of witnesses and the documentary proof was to control the determination of the issues.

Likewise, at that time I told you that I would be the judge of the law. This has not changed at this stage of the proceedings.

I will not review the facts in this case for you because I am certain that with summations by the attorneys there is no need for the Court to review the facts.

In any event, if you find that there is some fact in the case that you may have forgotten or don't recollect, or you could not agree with each other in your deliberations, you can have it read back from the record and that will, I am sure, refresh your memory.

In any event, I am the judge of the law. You must accept what I say to be the law in this case.

Now, the attorneys have been permitted by the

Charge of the Court

9 1 Court and by the rules to make opening statements and
2 summations to you. Under no circumstances are the
3 statements they have made by way of opening or by way
4 of summation to be taken as evidence. However, the
5 Court and the law does permit you to take the arguments
6 that they have proffered before you and weigh those
7 arguments. And if you agree with what they have said
8 on either side of the case, you may use those arguments
9 in your deliberations and in discussing the case with
10 each other, and try to convince one another as to
11 what the final determination shall be with reference
12 to the deliberations at hand.

13
14 If you feel that the arguments are not commen-
15 surate with the testimony and the proof in the case, you
16 may disregard them. The arguments are not evidence.
17 You need not weigh them. However, there are times
18 when the arguments of the attorneys will give you an
19 insight as to something you may have missed, and you
20 may discuss that portion of it if you so desire.

21 Now, of course, I also said to you that during
22 the trial, the Court will be the judge of the law.
23 Likewise as to motions, which at times we had at a side
24 bar, as you may recall, that was not for the purpose
25 of keeping any of the proof from you, but were matters

10

1

Charge of the Court

2

of law that were discussed between the attorneys and the Court itself and should not have come before you.

4

5

6

7

8

9

10

11

12

In any event, if you feel that you have discovered by some stretch of your imagination what this Court thinks as to either some of the testimony or the case itself, you should remove that from your mind because I tell you here and now I have come to no conclusion in this case, nor have I indicated to you in any way whatsoever what my feeling is with reference to the facts in the case, or with reference to the guilt or innocence of the defendants.

13

14

15

16

17

18

19

20

21

That is your province and your job. You should not try to weigh what you believe the Court's impression may be. You must understand that the lawyers who appear before you are advocates. They are advocating the best case they can for the parties they represent, and they have a right to exercise as much forcefulness as they desire in their questioning or otherwise in presenting their cases. I say this because this is within the framework of the ordinary trial.

22

23

24

25

As to the Court's comments on evidence, the law of the United States permits the Judge to comment to the jury on the evidence in the case. Such comments are only expressions of the Judge's opinion as to the

11

1

Charge of the Court

2

facts. And the jury may disregard them entirely since the jurors are the sole judges of the facts.

3

4

5

6

7

8

9

10

11

12

As to the Court's questions to witnesses during the course of the trial. During the course of the trial I asked questions of a witness in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions may have related. Remember at all times that you as jurors are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts.

13

14

15

16

17

18

19

As to the Court's comments to Counsel. It is the duty of the Court to admonish an attorney who, out of zeal for his cause, does something which is not in keeping with the rules of evidence or procedure. You are to draw no inference against the side to whom an admonition of the Court may have been addressed during the trial of this case.

20

21

22

23

24

25

As to objections and rulings, it is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

Charge of the Court

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence.

As stated before, the jurors are the sole judges of the credibility of all witnesses, and the weight and effect of all evidence. When the Court has sustained an objection to a question addressed to a witness, the jury must disregard the question entirely, and may draw no inference from the wording of it or speculate as to what the witness would have said if he had been permitted to answer any question.

Question and not evidence. If a lawyer asks a witness a question which contains an assertion of fact, you may consider the assertion as evidence of the fact. The lawyers' statements are not evidence.

In determining the facts, the jury is reminded that before each member was accepted and sworn to act as a juror, he or she was asked questions regarding his or her competency, qualifications, fairness and freedom from prejudice or similar thing. On the faith of those answers, the juror was accepted by the parties, therefore, those answers are as binding on each of the jurors now as they were then, and should

13 1

Charge of the Court

2 remain so until the jury is discharged from considera-
3 tion of this case.

4 You cannot decide that you do not like the
5 sections of the law that I will quote to you, or any
6 other part of the charge. You have the obligation of
7 accepting the law as I charge it, just as I have the
8 obligation of accepting your findings of fact in your
9 ultimate verdict as to the guilt or innocence of each
10 defendant as to each charge. It lends for predicta-
11 bility and stability if judges throughout the country
12 in types of charges such as this charge, uniformly, or
13 substantially so, and that juries accept it.

14 It would be unfair for you to decide this case
15 on your own notions on what the law should be and
16 another jury decide it on their own notions on what the
17 law should be. That is why the obligation is a firm
18 one, and one that you should understand.

19 Of course, you know by this time, that this case
20 has come before you by way of an indictment prepared
21 by a Grand Jury sitting in this Eastern District. That
22 indictment charges the defendants with the counts I
23 shall now read to you. Remember, the indictment is
24 merely an accusation, merely a piece of paper. It is
25 not evidence and is not proof of anything.

14

1

Charge of the Court

2

The indictment reads as follows:

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Count one: On or about and between the 1st day of January 1976 and the 31st day of May 1976, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants, Charles Williams, also known as "Chaz"; Robert McGray, also known as "Sabu"; Curtis King; Ronald Bell; Gary Graham and Robert Hariston, did knowingly and wilfully conspire to commit offenses in violation of Title 18, United States Code, Sections 2113(a) and (d), by conspiring to rob by force, violence and intimidation, a series of banks, within the Eastern District of New York and elsewhere the deposits of which banks were insured by the Federal Deposit Insurance Corporation.

In furtherance of said conspiracy and to achieve the objectives thereof, the defendants Charles Williams, also known as "Chaz"; Robert McGray, also known as "Sabu"; Curtis King; Ronald Bell; Gary Graham and Robert Hairston committed the following:

Overt Acts.

1. In or about the later part of January 1976, within the Eastern District of New York, the defendants, Charles Williams, Robert McGray, also known as "Sabu"

15 1

Charge of the Court

2

and Curtis King had a series of meetings during which they discussed and rehearsed robbing banks.

3

4

2. On or at February 9, 1976, the defendants Charles Williams, also known as "Chaz," Robert McGray also known as "Sabu," Curtis King, Ronald Bell and Gary Graham robbed the European American Bank, located on Brush Hollow Road in Westbury, New York.

5

6

7

8

9

10

11

12

13

3. On or about March 11, 1976, the defendants Charles Williams also known as "Chaz," Robert McGray also known as "Sabu," Curtis King and Robert Hairston robbed the Kilbourne State Bank, located at 6055 West Lisbon Avenue, in Milwaukee, Wisconsin.

14

15

16

17

18

19

4. On or about May 6, 1976 the defendants, Charles Williams also known as "Chaz," Robert McGray also known as "Sabu" and Curtis King robbed the Nassau Savings and Loan Association located at 77 Lincoln Avenue in Rockville Centre, New York. (Title 18, United States Code, Section 371.)

20

Count Two:

21

22

23

24

25

On or about the 9th day of February, 1976, with- in the Eastern District of New York, the defendants Charles Williams also known as "Chaz," Robert McGray also known as "Sabu," Curtis King, Ronald Bell and Gary Graham, did knowingly and wilfully by force,

16

1

Charge of the Court

2

3

4

5

6

7

8

9

10

11

violence and intimidation, take from the person and presence of the employees of the European-American Bank, Brush Hollow Road, Westbury, New York, approximately Twenty-Three Thousand Three Hundred Fifty Dollars (\$23,350) in United States currency, which money was in the care, custody, control, management and possession of said bank, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, Section 2113(a) and Section 2).

12

Count three:

13

14

15

16

17

18

19

20

21

22

23

24

25

On or about the 9th day of February, 1976, with- in the Eastern District of New York, the defendants, Charles Williams also known as "Chaz," Robert McGray also known as "Sabu," Curtis King, Ronald Bell and Gary Graham, did knowingly and wilfully, by force, violence and intimidation, take from the person and presence of employees of the European-American Bank, Brush Hollow Road, Westbury, New York, approximately Twenty-Three Thousand Three Hundred Fifty Dollars (\$23,350) in United States currency, which money was in the care, custody, control, management and possession of said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation,

17

1

Charge of the Court

2

3

4

5

6

7

8

9

10

Count Four:

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

and in the commission of this act and offense the defendants Charles Williams also known as "Chaz," Robert McGray also known as "Sabu," Curtis King, Ronald Bell and Gary Graham did assault and place in jeopardy the lives of said bank employees as well as the lives of other persons present, by use of a dangerous weapon. (Title 18, United States Code, Sections 2113(d) and 2).

On or about the 6th day of May, 1976, within the Eastern District of New York, the defendants Charles Williams also known as "Chaz," Robert McGray also known as "Sabu" and Curtis King did knowingly and wilfully, by force, violence and intimidation take from the person and presence of the employees of the Nassau Savings and Loan Association, 77 Lincoln Avenue, Rockville Centre, New York, approximately Twenty-Four Thousand, Fifty-Three Dollars (\$24,053) in United States currency, which money was in the care, custody, management and possession of said bank, the deposits of which were then and there insured by the Federal Savings and Loan Insurance Corporation. (Title 18, United States Code, Sections 2113(a) and 2).

Count Five:

Charge of the Court

On or about the 6th day of May, 1976, within the Eastern District of New York, the defendants Charles Williams also known as "Chaz," Robert McGray also known as "Sabu" and Curtis King did knowingly and wilfully, by force, violence and intimidation, take from the person and presence of employees of the Nassau Savings and Loan Association, 77 Lincoln Avenue, Rockville Centre, New York, approximately Twenty-Four Thousand, Fifty-Three Dollars (\$24,053) in United States currency, which money was in the care, custody, control, management and possession of said bank, the deposits of which bank were then and there insured by the Federal Savings and Loan Insurance Corporation, and in the commission of this act and offense the defendants Charles Williams also known as "Chaz," Robert McGray also known as "Sabu," and Curtis King did assault and place in jeopardy the lives of said bank employees as well as the lives of other persons present, by use of a dangerous weapon. (Title 18, United States Code, Sections 2113(d) and 2).

Consider Each Count Separately.

A separate crime or offense is charged in each count of the indictment. Each charge and the evidence pertaining to it should be considered separately. The

19 1

Charge of the Court

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

fact that you may find the accused guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

Consider Each Defendant.

It is your duty to give separate, personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence in the case shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against the other defendant. Each defendant is entitled to have his case determined from evidence as to his own acts and statements and conduct, and any other evidence in the case which may be applicable to him.

Each defendant is entitled to have his guilt or innocence as to each of the crimes charged determined from his own conduct and from the evidence which applies to him, as if he were being tried alone. The guilt or innocence of any one defendant of any of the crimes charged should not influence the jury's verdicts respecting the other defendant. They may find any one or more of the defendants guilty or not guilty. Nevertheless, you must relate the evidence only as to that defendant or those defendants toward whom it was

20 1

Charge of the Court

2

3

4

5

received. And in any event, you must determine the guilt of the defendant as to each separate charge by giving separate consideration to the evidence which applies to him as to each count.

6

7

8

I am going to give you some introductory remarks relating to the organization and structure of this charge.

9

10

11

12

13

For purposes of clarity, and in order to facilitate your understanding, I will instruct you on the law regarding the various crimes charged in the indictment in a different order than these crimes are set forth in the indictment.

14

15

16

17

18

19

20

21

The defendants are charged with certain substantive offenses of robbery relating to the alleged robbery of two banks, the European-American Bank, located at Brush Hollow Road, Westbury, New York, on or about the 9th day of February, 1976, and the Nassau Savings and Loan Association, located at 77 Lincoln Avenue, Rockville Centre, New York, on or about the 6th day of May, 1976.

22

23

24

25

As to each of these two banks, two separate offenses are charged, to wit, violation of Title 18, of the United States Code, Section 2113(a) and Title 18 of the United States Code, Section 2113(d), both

21

1

Charge of the Court

2

of which I will explain to you in a few moments.

3

4

5

6

7

8

First, I will instruct you on the law governing the two alleged violations of Title 18 of the United States Code, Section 2113(a). Then, I will next instruct you on the law governing the two alleged violations of Title 18 of the United States Code, Section 2113(d).

9

10

11

12

13

14

Finally, I will instruct you on the law governing Count One of the indictment in which pursuant to Title 18 of the United States Code, Section 371, the defendants are charged with the separate offense of conspiracy to violate the aforementioned substantive bank robbery statutes.

15

16

17

General introductory remarks regarding the statutes applicable to Counts Two and Four in this case.

18

19

20

21

22

23

The individual counts numbered two and four of this indictment are both based on the very same sections of the very same statutes, which I will read for you in a few moments, to wit, Title 18 of the United States Code, Section 2113(a) and Title 18 of the United States Code, Section 2.

24

25

Let me emphasize this to you for it is of crucial importance. Although the counts numbered two

22

1

Charge of the Court

2

and four are based on the very same sections of the very same statutes, each count charges a separate offense occurring on or about a different time and occurring at a separate banking institution.

3

4

5

6

7

8

9

Count two relates to an alleged bank robbery occurring on or about the 9th day of February, 1976 at the European-American Bank, Brush Hollow Road, Westbury, New York.

10

11

12

13

Count four relates to an alleged bank robbery occurring on or about the 6th day of May, 1976, at the Nassau Savings and Loan Association, 77 Lincoln Avenue, Rockville Centre, New York.

14

(Continued on next page.)

15

16

17

18

19

20

21

22

23

24

25

JB/ed 1
5PM-1

Charge of the Court

THE COURT: (Continued)

Therefore, each count should be carefully, seriously, and separately and individually considered by you as such.

I will now read for you the applicable law governing the separate and individual counts numbered two and four. Please apply this law to each of the aforementioned counts separately and individually.

In each case ask yourselves, in applying the law to each factual transaction set out in the individual counts, numbered two and four, has the Government met its burden of proof as to each such count when considered separately and individually?

Counts two and four of the indictment are based on Title 18 of the United States Code, Section 2113(a) and Title 18 of the United States Code, Section 2.

Section 2113(a) of Title 18 of the United States Code provides in pertinent part as follows:

"Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank commits an offense

Charge of the Court

against the laws of the United States."

In a case where two or more persons are charged with the commission of a crime, the guilt of any defendant may be established without proof that he personally did every act constituting the offense charged.

Section 2 of Title 18 of the United States Code deals with the aiding and abetting of the commission of an offense against the laws of the United States. Section 2 provides in pertinent part as follows:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

"Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States is punishable as a principal."

In other words, every person who willfully participates in the commission of a crime may be found to be guilty of that offense. Participation is willfull if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad

Charge of the Court

purpose either to disobey or to disregard the law.

"Aid and Abet" -- defined.

In order to aid and abet another to commit a crime it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it as he would in something he wishes to bring about; that is to say, that he wilfully seek by some act or omission of his to make the criminal venture succeed.

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad propose either to disobey or to disregard the law.

You, of course, may not find any defendant guilty unless you find beyond reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant participated in its commission.

Willfully to "cause" criminal act -- defined.

In order to cause another person to commit a criminal act, it is necessary that the accused willfully do, or willfully fail to do, something which, in

Charge of the Court

the ordinary performan of official duty, or in the ordinary course of the business or employment of such other person, or by reason of the ordinary course of nature or the ordinary habits of life, results in the other person's either doing something the law forbids, or failing to do something the law requires to be done.

An act or a failure to act is "willfully" done, if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

"Mere Presence" not sufficient.

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond reasonable doubt that the defendant was a participant and not merely a knowing spectator.

To determine whether a defendant aided and abetted the commission of an offense, you ask yourselves these questions: Did he associate himeself with the venture? Did he participate in it as something he wished to bring about? Did he seek by his action to

Charge of the Court

make it succeed? If he did, then he is an aider and abettor.

Essential Elements of the offense.

In order to find either of the defendants guilty of the crimes charged in counts two and four of the indictment, you must find the following elements beyond a reasonable doubt:

First: The act or acts of taking, from the person or presence of another, money belonging to or in the care, custody, control, management, or possession of a bank, as charged, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation; or the Federal Savings and Loan Insurance Corporation, is applicable.

Second: The act or acts of taking such money by force or violence, or by means of intimidation;

Third: Doing such act or acts knowingly, willfully, and intentionally.

You are reminded that in considering each of the essential elements of the crime charged in counts two and four of the indictment, that whoever aids, abets, counsels, commands or procures the commission of an offense against the laws of the United States is punishable as a principal. In order to aid or abet the

Charge of the Court

commission of an offense against the laws of the United States, a person must associate himself with the criminal venture, participate in it, and try to make it succeed.

As stated before, the burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged.

Always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

General introductory remarks regarding the statutes applicable to counts three and five of this case.

The individual counts numbered three and five of this indictment are both based on the very same sections of the very same statutes which I will read for you in a few moments, to wit, Title 18 of the United States Code, Section 2113(d) and Title 18 of the United States Code, Section 2.

Let me emphasize this to you for it is of crucial importance. Although the counts numbered three and five are based on the very same sections of the very same statutes, each count charges a separate

Charge of the Court

offense occurring on or about a different time and occurring at a separate banking institution.

Count three relates to an alleged bank robbery occurring on or about the 9th day of February, 1976, at the European-American Bank, Brush Hollow Road, Westbury, New York..

Count five relates to an alleged bank robbery occurring on or about the 6th day of May, 1976, at the Nassau Savings and Loan Association, 77 Lincoln Avenue, Rockville Centre, New York.

Therefore, each count should be carefully, seriously, and separately and individually considered by you as such.

I will now read for you the applicable law governing the separate and individual counts numbered three and five. Please apply this law to each of the aforementioned counts separately and individually.

In each case ask yourselves, in applying the law to each factual transaction set out in the individual counts, numbered three and five, has the Government met its burden of proof as to each such count when considered separately and individually?

Counts three and five of the indictment are based on Title 18 of the United States Code, Section

8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Charge of the Court

2113(d) and Title 18 of the United States Code,
Section 2.

Section 2113(d) of Title 18 of the United
States Code provides in pertinent part as follows:

"Whoever, in committing, or in attempt-
ing to commit, any offense defined in subsection
(a) of this section, assaults any person, or
puts in jeopardy the life of any person by the
use of a dangerous weapon or device, commits
an offense against the laws of the United
States."

As I have instructed you earlier in the charge,
the guilt of a defendant may be established without
proof that the accused personally did every act con-
stituting the offense charged, in a case where two
or more persons are charged with the commission of a
crime.

I have already advised you that Section 2 of Title
18 of the United States Code deals with the aiding and
abetting of the commission of an offense against the
laws of the United States. Section 2 provides in
pertinent part as follows:

"Whoever commits an offense against the
United States, or aids, abets, counsels,

Charge of the Court

commands, induces, or procures its commission, is punishable as a principal.

"Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

Thus, as I have previously stated to you, the guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

In other words, every person who willfully participates in the commission of a crime may be found to be guilty of that offense. Participation if willful if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

Let me re-emphasize to you in your consideration of counts three and five of the indictment that in order to aid and abet another to commit a crime, it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it as he would in something he

10

1

Charge of the Court

2

3

4

wishes to bring about; that is to say, that he will-
fully seek by some act or omission of his to make the
criminal venture succeed.

5

6

7

8

9

10

An act or omission is "willfully" done, if done
voluntarily and intentionally and with the specific
intent to do something the law forbids, or with the
specific intent to fail to do something the law requires
to be done; that is to say, with bad purpose either
to disobey or to disregard the law.

11

12

13

14

15

You, of course, may not find any defendant
guilty unless you find beyond reasonable doubt that
every element of the offense as defined in these
instructions was committed by some person or persons,
and that the defendant participated in its commission.

16

17

18

19

20

21

22

23

24

In order to cause another person to commit a
criminal act, it is necessary that the accused will-
fully do, or willfully fail to do, something which, in
the ordinary performance of official duty, or in the
ordinary course of the business or employment of such
other person, or by reason of the ordinary course of
nature or the ordinary habits of life, results in the
other person's either doing something the law forbids,
or failing to do something the law requires to be done.

25

An act or a failure to act is "willfully" done,

11

1

Charge of the Court

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond reasonable doubt that the defendant was a participant and not merely a knowing spectator.

As I instructed you earlier, to determine whether a defendant aided and abetted the commission of an offense, you ask yourselves these questions; did he associate himself with the venture? Did he participate in it as something he wished to bring about? Did he seek by his action to make it succeed? If he did, then he is an aider and abettor.

Let me re-emphasize to you that the burden is always upon the Government to prove beyond a reasonable doubt every essential element of the crime charged; the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

12

Charge of the Court

Essential elements of the offense.

In order to find either of the defendants guilty of the crimes charged in counts three and five of the indictment, you must find the following elements beyond a reasonable doubt:

First: The act or acts of taking, from the person or presence of another, money belonging to or in the care, custody, control, management, or possession of a bank, as charged, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, or the Federal Savings and Loan Insurance Corporation, as applicable.

Second: The act or acts of taking such money by force or violence, or by means of intimidation;

Third: The act or acts of assaulting, or of putting in jeopardy the life of any person by the use of a dangerous weapon or device, while engaged in stealing such money from the bank as charged;

Fourth: That the aforementioned dangerous weapon or device used was a loaded gun;

Fifth: Doing such act or acts knowingly, willfully, and intentionally.

Thus, one who knowingly, willfully and intentionally violates Section 2113(a) of Title 18 of the

13

1

Charge of the Court

2

3

4

5

6

7

8

United States Code and who in the commission of this act and offense assaults and places in jeopardy the lives of bank employees there present or the lives of any other persons there present, by the use of a loaded gun, is also guilty of the separate crime of violating Title 18 of the United States Code, Section 2113(d).

9

10

11

12

13

14

15

16

17

18

19

Ladies and Gentlemen of the jury, please bear in mind that in considering each of the essential elements of the crime charged in counts three and five of the indictment, that whoever aids, abets, counsels, commands or procures the commission of an offense against the laws of the United States is punishable as a principal. In order to aid or abet the commission of an offense against the laws of the United States, a person must associate himself with the criminal venture, participate in it, and try to make it succeed.

20

21

22

As stated before, the burden is always upon the Government to prove beyond a reasonable doubt every essential element of the crime charged.

23

24

25

Always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Charge of the Court

Statute:

Count one of the indictment is based on Title 18 of the United States Code, Section 371 which reads in pertinent part as follows:

"If two or more persons conspire...to commit any offense against the United States... and one or more of such persons do any act to effect the object of the conspiracy, each is guilty of an offense against the laws of the United States."

Conspiracy defined -- Proof of existence:

A conspiracy is a combination of two or more persons, by concerted action, to accomplish some unlawful purpose, or to accomplish some lawful purpose by unlawful means. So, a conspiracy is a kind of "partnership in criminal purposes," in which each member becomes the agent of every other member. The gist of the offense, is a combination or agreement to disobey, or to disregard, the law.

Mere similarity of conduct among various persons, and the fact they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

15

1

Charge of the Court

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

However, the evidence in the case need not show that the members entered into any express or formal agreement or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished. What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, expressly or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the indictment were agreed upon to carry out the alleged conspiracy; nor that all means or methods, which were agreed upon, were actually used or put into operation; nor that all of the persons charged to have been members of the alleged conspiracy were such. What the evidence in the case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed by two or more persons, including the accused.

Membership in conspiracy -- proof of.

One may become a member of a conspiracy without

Charge of the Court

16 1 full knowledge of all the details of the conspiracy.
2 On the other hand, a person who has no knowledge of a
3 conspiracy but happens to act in a way which furthers
4 some object or purpose of the conspiracy, does not
5 thereby become a conspirator.
6

7 Before the jury may find that a defendant, or any
8 other person, has become a member of a conspiracy, the
9 evidence in the case must show beyond a reasonable
10 doubt that the conspiracy was knowingly formed, and
11 that the defendant, or other person who is claimed to
12 have been a member, willfully participated in the unlaw-
13 ful plan, with the intent to advance or further some
14 object or purpose of the conspiracy.

15 To act or participate willfully means to act or
16 participate voluntarily and intentionally, and with
17 specific intent to do something the law forbids, or
18 with specific intent to fail to do something the law
19 requires to be done; that is to say, to act or parti-
20 cipate with the bad purpose either to disobey or to
21 disregard the law. So, if a defendant, or any other
22 person, with understanding of the unlawful character
23 of a plan, knowingly encourages, advises or assists,
24 for the purpose of furthering the undertaking or
25 scheme, he thereby becomes a willful participant - a

17

1

Charge of the Court

2

conspirator.

3

4

5

6

One who willfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

7

8

9

10

11

12

13

14

15

16

In determining whether a conspiracy existed, the jury should consider the actions and declarations of all of the alleged participants. However, in determining whether a particular individual was a member of the conspiracy, the jury should consider only his acts and statements. He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed beyond a reasonable doubt, and that he was one of its members.

17

18

19

20

21

22

23

24

25

Essential elements of the offense

As I have previously advised you, count one of the indictment charges that on or about and between the 1st day of January 1976 and the 31st day of May 1976, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants Charles Williams and Robert McGray along with other named co-conspirators did knowingly and willfully conspire to commit offenses in violation of Title 18, United States Code, Sections 2113(a) and

18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Charge of the Court

2113(d), by conspiring to rob by force, violence and intimidation, a series of banks, within the Eastern District of New York and elsewhere the deposits of which banks were insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

The essential elements of this offense, each of which the Government must prove beyond a reasonable doubt are:

First: That two or more persons were involved since a conspiracy requires an agreement;

Second: That the purpose of the agreement was to rob by force, violence and intimidation, a series of banks, within the Eastern District of New York and elsewhere, the deposits of which banks were insured by the Federal Deposit Insurance Corporation, or the Federal Savings and Loan Insurance Corporation, as applicable.

Third: That the conspiracy described in the indictment was willfully formed, and was existing at the time alleged, namely, on or about and between the 1st day of January 1976 and the 31st day of May 1976, both dates being approximate and inclusive;

Fourth: That each individual defendant did

19

1

Charge of the Court

2

knowingly, willfully, and intentionally become a member of and take part in such conspiracy;

3

4

Fifth: That after the formation of the conspiracy, one of the conspirators did knowingly, willfully and intentionally commit at least one of the overt acts charged in the indictment, at or about the time and place alleged;

5

6

7

8

9

10

11

12

Sixth: That such overt act was knowingly, willfully, and intentionally committed in knowing, willful, and intentional furtherance of some object or purpose of the conspiracy, as charged.

13

14

15

16

17

18

19

20

21

22

23

24

25

If the jury should find beyond a reasonable doubt from the evidence in the case that existence of the conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy one of the overt acts alleged was knowingly, willfully, and intentionally done by one of the conspirators in knowing, willful, and intentional furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charged is complete; and it is complete as to every person found by the jury to have been knowingly, willfully, and intentionally a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt

20

1

Charge of the Court

2

act.

3

4

5

6

7

8

As stated before, the burden is always upon the Government to prove beyond a reasonable doubt every essential element of the crime charged; the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

9

Acts and Declarations of Co-conspirators:

10

11

12

13

14

15

16

17

18

19

20

21

22

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter knowingly made and the acts thereafter knowingly done, by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

23

24

25

Otherwise, any admission or incriminatory statement made or act done outside of court, by one person, may not be considered as evidence against any person

21

1

Charge of the Court

2

who was not present and did not hear the statement

3

made, or see the act done.

4

5

Therefore, statements of any conspirator, which

6

are not in furtherance of the conspiracy, or made be-

7

fore its existence, or after its termination, may be

8

considered as evidence only against the person making

9

them.

10

Consieration of Evidence -- Success of Conspir-

11

acy Immaterial -- Definition of "Overt Act":

12

In your consideration of the evidence in the case

13

as to the offense of conspiracy charged, you should

14

first determine whether or not the conspiracy existed,

15

as alleged in the indictment. If you conclude that the

16

conspiracy did exist, you should next determine whether

17

or not the accused willfully became a member of the

18

conspiracy.

19

If it appears beyond a reasonable doubt from the

20

evidence in the case that the conspiracy alleged in the

21

indictment was willfully formed, and that the (a) de-

22

fendant willfully became a member of the conspiracy

23

either at its inception or afterwards, and that there-

24

after one or more of the conspirators knowingly com-

25

mitted one or more of the overt acts charged in further-

ance of some object or purpose of the conspiracy, then

2 there may be a conviction even though the conspirators
3 may not have succeeded in accomplishing their common
4 object or purpose and in fact may have failed of so
5 doing.

6 The extent of any defendant's participation,
7 moreover, is not determinative of his guilt or inno-
8 cence. A defendant may be convicted as a conspirator
9 even though he may have played only a minor part in the
10 conspiracy.

11 An "overt act" is any act knowingly committed
12 by one of the conspirators, in an effort to effect or
13 accomplish some object or purpose of the conspiracy.
14 The overt act need not be criminal in nature, if con-
15 sidered separately and apart from the conspiracy. It
16 may be as innocent as the act of a man walking across
17 the street, or driving an automobile, or using a tele-
18 phone. It must, however, be an act which follows and
19 tends toward accomplishment of the plan or scheme, and
20 must be knowingly done in furtherance of some object or
21 purpose of the conspiracy charged in the indictment.

22 Must be more than one conspirator:

23 The first count of the indictment charges a
24 conspiracy among the defendants named in the indictment.
25 You are charged as a matter of law that a person cannot

23

1

Charge of the Court

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

conspire with himself. Therefore, you cannot find either of the defendants, on trial here, guilty of the crime of conspiracy, unless you find beyond a reasonable doubt that such defendant participated in a conspiracy with one of the other named defendants. For the purposes of the law of conspiracy, it does not matter whether that other named defendant is or is not actually on trial here at the present time.

Re: The requirement in a conspiracy charge of specific intent to violate the substantive statute:

You are hereby instructed as a matter of law, that with reference to the conspiracy count charged in this case, the Government must establish beyond a reasonable doubt a specific and definite intent on the part of a defendant to violate the substantive statute before you can find a defendant guilty of the conspiracy charge.

Ladies and Gentlemen, you will note that the conspiracy count of the indictment charges that that offense was committed "on or about and between" a certain date. The proof need not establish with certainty the exact date of the alleged offense of conspiracy. It is sufficient if the evidence in the

24 1

Charge of the Court

2

case establishes beyond a reasonable doubt that the offense of conspiracy was committed on a date reasonably near the date alleged.

5

Definitions:

6

7

Please bear in mind the following definitions in considering the essential elements of the crimes charged in the indictment.

8

9

Definition of knowingly:

10

11

12

An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

13

14

15

16

The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake, or accident, or other innocent reason.

17

18

19

20

21

22

Definition of "willfully" or "unlawfully" to act.

An act is done "willfully" or "unlawfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

23

24

25

Definition of Specific Intent -- applicable to all offenses charged in the indictment.

The crimes charged in this case are serious

Charge of the Court

crimes which require proof of specific intent before a defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent, the government must prove that a defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer the defendant's intent from the surrounding circumstances. You may consider any statement made an act done or omitted by a defendant, and all other facts and circumstances in evidence which indicate his state of mind.

(Continued on next page.)

1
T5aJB 2
flp.

To Take "by Intimidation"-- Defined

SPM-1-A 3

To take, or attempt to take, "by intimidation"

4 means willfully to take, or attempt to take, by putting
5 in fear of bodily harm. Such fear must arise from
6 the willful conduct of the accused, rather than from
7 some mere temperamental timidity of the victim; however,
8 the fear of the victim need not be so great as to result
9 in terror, panic, or hysteria.

10 A taking, or an attempted taking, "by intimidat-
11 ion" must be established by proof of one or more acts or
12 statements of the accused which were done or made,
13 in such a manner, and under such circumstances, as
14 would produce in the ordinary person fear of bodily
15 harm.

16 However, actual fear need not be proved. Fear,
17 like intent, may be inferred from statements made and
18 acts done or omitted by the accused, and by the victim
19 as well; and from all the surrounding circumstances shown
20 by the evidence in the case.

21 "Possession" of Money by a Bank--Defined

22 The law recognizes two kinds of possession;
23 actual possession and constructive possession. A
24 person who knowingly has direct physical control over
25 a thing, at a given time, is then in actual possession

Charge of the Court

of it.

A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

If you should find beyond a reasonable doubt from the evidence in the case that, at the time and place of the alleged offense, the European American Bank or the Nassau Federal Savings and Loan Association, either alone or jointly with others, had actual or constructive possession of the money described in the indictment, then you may find that such money was in the possession of the bank, within the meaning of the word "possession" as used in these instructions.

To "Assault" a Person--Defined

If the jury should find beyond a reasonable doubt from the evidence in the case that the accused did willfully commit robbery of the bank, as charged,

Charge of the Court

then the jury must proceed to determine whether the evidence in the case establishes that the accused, in committing robbery of the bank, assaulted or put in jeopardy the lives of bank employees or other persons present at the bank at the time of the robbery, as charged in the indictment.

Any willful attempt or threat to inflict injury upon the person of another, when coupled with a present actual ability to do so, constitutes an assault. An assault may be committed without actually touching, or striking, or doing bodily harm to the person of another.

So, a person who has the present objective capacity, that is, the present actual ability to inflict bodily harm or injury upon another person, and willfully attempts or even threatens to inflict such bodily harm, as by intentionally flourishing or pointing a pistol or gun at another person, may be found to have assaulted such person.

As I have previously indicated to you, in order to find an assault within the meaning of this statute, you would have to make a finding that the gun used during the course of the robbery was loaded.

To "Put in Jeopardy the Life" of a Person "by

Charge of the Court

the Use of a Dangerous Weapon or Device" -- Defined.

A "dangerous weapon or device" includes anything capable of being readily operated, manipulated, wielded, or otherwise used by one or more persons to inflict severe bodily harm or injury upon another person. So, an operable firearm, such as a pistol, revolver, or other "gun", capable of firing a bullet or other "ammunition", may be found to be a dangerous weapon or device.

To "put in jeopardy the life" of a person "by the use of a dangerous weapon or device" means, then, to expose such person to a risk of death by the use of such dangerous weapon or device.

Please bear in mind that in order to find that the defendant put in jeopardy the life of a person by the use of a dangerous weapon or device, within the meaning of this statute, you would have to make a finding that the gun used during the course of the robbery was loaded.

Reasonable Doubt.

Now, there are in any case, and in this one, two types of evidence from which a jury may properly find a defendant guilty of a crime, one is direct evidence such as testimony of any eyewitness, the

Charge of the Court

other is circumstantial evidence which is proof of a chain of facts and circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

A defendant is presumed innocent of the crime. Thus the defendant, although accused, begins the trial with a clean slate and with no evidence against him, and the law permits nothing but legal evidence to be presented before a jury to be considered in support of any charge against the accused, so that the presumption of innocence alone is sufficient to acquit a defendant unless you, the jury, are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt, and reasonable doubt is based upon reason and common sense, the kind of doubt that would make a reasonable person hesitate to act. Proof

Charge of the Court

6 1
2 beyond a reasonable doubt must therefore, ne proof of
3 such a convincing character that you would be willing
4 to rely and act upon it unhesitatingly in the most
5 important of your own affairs.

6 You, the jury, will remember that a defendant
7 is never to be convicted on mere suspicion or
8 conjecture. The burden is always upon the prosecution
9 to prove guilt beyond a reasonable doubt. This burden
10 never shifts to a defendant. The law never imposes
11 upon a defendant in a criminal case the burden or duty
12 of calling any witnesses or producing any evidence.

13 So, if the jury views the evidence in the case
14 as reasonably permitting either of two conclusions,
15 one of innocence, the other of guilt, you, the jury,
16 should, of course, adopt the conclusion of innocence.

17 I have said that the defendant may be proven
18 guilty either by direct or circumstantial evidence.
19 I have said that direct evidence is the testimony of
20 one who asserts actual knowledge of a fact, such as
21 an eyewitness. Also circumstantial evidence is proof
22 of a chain of facts and circumstances indicating the
23 guilt or innocence of a defendant. You, the jury,
24 may make common sense inferences from the proven facts.

25 It is not necessary that all inferences drawn

Charge of the Court

from the facts in evidence be consistent only with guilt and inconsistent with every reasonable hypothesis of innocence. The test is one of reasonable doubt, and should be based upon all the evidence, the testimony of the witnesses, the documents offered into evidence and the reasonable inferences which can be drawn from the proven facts.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from the facts which have been proved. You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from the facts which you find have been proved, such reasonable inferences as seem justified in the light of your own experience.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon failure of the prosecution to establish such proof.

Proof of Knowledge and Intent.

8 1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Knowledge and intent exist in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you have for arriving at a decision in these questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

All Available Evidence Need Not be

Produced.

The law does not require the prosecution to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require the prosecution to produce as exhibits all papers and things mentioned in the evidence.

However, in judging the credibility of the witnesses who have testified, and in considering the weight and effect of all evidence that has been produced, the jury may consider the prosecution's

Charge of the Court

failure to call other witnesses or to produce other evidence shown by the evidence in the case to be in existence and available.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence, and no adverse inferences may be drawn from his failure to do so.

You are instructed as a matter of law that for various legal reasons, the government could not call Theresa Jordan. You are to draw no inferences or conclusions either for or against either side regarding the absence of this person. You are not to speculate in any manner as to this issue. You are totally to disregard that reference to Ms. Jordan, by Mr. Lombardino in his summation.

Absence of Witness

If it is peculiarly within the power of either the prosecution or the defense to produce a witness who could give material testimony on an issue in the case, failure to call that witness may give rise to an inference that his testimony would be unfavorable to that party. However, no such conclusion should be drawn by you with regard to a witness who is equally available to both parties, or where the witness' testimony would be merely cumulative.

10

1

Charge of the Court

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

The jury will always bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Number of Witnesses Not Necessarily Controlling.

The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of greater credence. You may find that the testimony of a small number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

Not Required to Accept Uncontradicted Testimony.

You are not required to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness' bearing and demeanor, or because of the inherent improbability of his testimony, or for other reasons sufficient to you, that such testimony is not worthy of belief.

(On the other hand, the government is not required to prove the essential elements of the offense as

11 1

2

3

4

5

6

7

8

defined in these instructions by any particular number of witnesses. The testimony of a single witness may be sufficient to convince you beyond a reasonable doubt of the existence of an essential element of the offense charged, if you believe that the witness has truthfully and accurately related what in fact occurred.)

9

CREDIBILITY OF WITNESSES

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves, and it goes without saying that you should scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and his demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted

Charge of the Court

121

2

by other evidence in the case.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an indictment or a transaction may see or hear it differently; and innocent misrecollection; like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves. Another test that you can use in determining the truthfulness or credibility of a witness is to use your own good common sense in addition to these essentials that I have given you. You can use your good common sense as you do in your everyday experience where you must take important decisions based upon what others tell you. When you decide to either accept or ignore the statements of others you use your common sense. Your good judgment will say to you somehow or other that

13 1

Charge of the Court

2 whatever they say does not appear to be truthful, that
3 somehow or other you just do not believe what they
4 have said. That is your ability to reason, your
5 ability to determine the truthfulness of the person
6 you are speaking with. Likewise, your common sense
7 should be used to determine the weight to be given the
8 testimony of a witness.

9 You take that same good common sense into the
10 jury room, you do not leave it outside. In addition to
11 what I have said, use your common sense as a test in
12 exercising your good judgment and in determining whether
13 or not this defendant is guilty of the crimes charged.
14 It is for you to determine whether the witnesses in this
15 case have testified truthfully, whether or not they
16 have an interest in the case, what that interest may
17 be and how great it is and whether or not they have
18 told you falsehoods. This is all for you to determine.

19 Every witness' testimony must be weighed as
20 to its truthfulness. If you find any witness lied as
21 to any material facts in the case then the law gives
22 you certain privileges. One of those privileges is
23 that you have the right to disregard the entire testi-
24 mony of that witness. If you find, however, that
25 you can sift through that testimony and determine which

14 1

Charge of the Court

2 of the testimony is true and which was false, then
3 the law allows you to take the portions which were true
4 and weigh it and disregard those portions which were
5 false. That again is within your prerogative.

6 The weight of the evidence is not necessarily
7 determined by the number of witnesses testifying on
8 either side. You should consider all the facts and
9 circumstances in evidence to determine which of the
10 witnesses are worthy of greater credence. You may
11 find that the testimony of a smaller number of witnesses
12 on one side is more credible than the testimony of a
13 greater number of witnesses on the other side.

14 You are not obliged to accept testimony; even
15 though the testimony is uncontradicted and the witness
16 is not impeached. You may decide, because of the
17 witness' bearing and demeanor, or because of the in-
18 herent improbability of his testimony, or for other
19 reasons sufficient to you, that such testimony is
20 not worthy of belief.

21 The government is not required to prove the
22 essential elements of the offense as defined in these
23 instructions by any particular number of witnesses. The
24 testimony of a single witness may be sufficient to con-
25 vince you beyond a reasonable doubt of the existence

151

Charge of the Court

2

of an essential element of the offense charged, if

3

you believe beyond a reasonable doubt that the witness

4

is telling the truth.

5

Testimony of Federal Officials and Police

6

Officers.

7

The probable truthfulness and believability

8

of every witness is for you, and for each of you to

9

decide; that I have already instructed you. The

10

fact that such witnesses come before you as Federal

11

Officials and Police Officers should not in the least

12

change your attitude in this respect. Their testimony

13

does not deserve either greater or lesser believability,

14

simply because of their official status.

15

Whether you do, or do not, believe any witness must

16

depend upon how truthful you judge that witness to be

17

after you have heard the testimony and formed your

18

own conclusions as to the witness' believability.

19

Prior Inconsistent statement--Witness other

20

than Accused.

21

Evidence that at some other time a witness, other

22

than the accused, has said or done something, or has

23

failed to say or do something, which is inconsistent with

24

the witness' testimony at the trial, may be considered

25

by the jury for the sole purpose of judging the

16 1

Charge of the Court

2 credibility of the witness; but may never be considered
3 as evidence or proof of the truth of any such statement.

4 Impeachment - Conviction of Felony

5 The testimony of a witness may be discredited
6 or impeached by showing that the witness has been
7 convicted of a felony, that is, a crime punishable by
8 imprisonment for a term of years. Prior conviction
9 does not render a witness incompetent to testify, but
10 is merely a circumstance which you may consider in
11 determining the credibility of the witness. It is the
12 province of the jury to determine the weight to be given
13 to any prior conviction as impeachment.

14 Testimony of Informer - Interested Witness.

15 The testimony of an informer who provides evi-
16 dence against a defendant for pay, for personal advantage
17 must be examined and weighed by the jury with greater
18 care than the testimony of an ordinary witness. The
19 jury must determine whether the informer's testimony has
20 been affected by interest, or by prejudice against
21 defendant.

22 Testimony of Accomplice.

23 An accomplice is one who unites with another per-
24 son in the commission of a crime, voluntarily and
25 with common intent. An accomplice does not become

Charge of the Court

17

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of one who asserts by his testimony that he is an accomplice, may be received in evidence and considered by the jury, even though not corroborated by other evidence, and given such weight as the jury feels it should have. The jury, however, should keep in mind that such testimony is always to be received with caution and considered with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond a reasonable doubt.

The law does not prohibit the use of an accomplice. And whether or not you approve of their use is not to enter into your consideration of this case. In certain types of crime, the Government of necessity is frequently compelled to rely upon the testimony of accomplices, persons with criminal records, or informers. Otherwise, it would be difficult to detect or prosecute some wrongdoers, and this is particularly true in conspiracy cases. Often the Government has no choice in the matter. It must take the witnesses to the transactions as they are. Their testimony, however, must be received with

Charge of the Court

18 1

2

great caution and given such weight as you deem it entitled to be received under all the circumstances of the entire case.

3

4

5

6

7

8

The testimony of an accomplice alone, if believed by the jury beyond a reasonable doubt, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence.

9

10

11

However, I reemphasize that the jury should keep in mind that such testimony is always to be received with caution and weighed with great care.

12

13

14

15

16

As I have stated, accomplice testimony by itself may be sufficient to convict, but you should never convict a defendant upon the unsupported testimony of an accomplice unless you believe that unsupported testimony beyond a reasonable doubt.

17

18

19

Devitt and Blackmar, Section 17.06

United States vs. Swidersky, 539 F. 2d 854

860 (2d Cir. 1976).

20

21

22

United States vs. Projansky, 465 F.2d 123, 136 n.25 (2d Cir.), cert. denied, 409 U.S. 1006 (1972).

23

24

25

Identification of Defendant.

The evidence in this case raises the question of whether the defendant was in fact the criminal actor

19 1

Charge of the Court

2

and necessitates your resolving any uncertainty in testimony on that issue.

3

4

Identification testimony is an expression of belief or impression by the witness. Its value depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later.

5

6

7

8

9

Inappraising the identification testimony of a witness, you should consider the following:

10

11

(1) Are you convinced that the witness had the capacity and an adequate opportunity to observe the offender?

12

13

14

Whether the witness had an adequate opportunity to observe the offender at the time of the offense will be affected by such matters as how long or short a time was available, how far or close the witness was, how good were lighting conditions, whether the witness had had occasion to see or know the person in the past.

15

16

17

18

19

20

(In general, a witness bases any identification he makes on his perception through the use of his senses. Usually the witness identifies an offender by the sense of sight -- but this is not necessarily so, and he may use other senses.)

21

22

23

24

25

(2) Are you satisfied that the identification

Charge of the Court

20 1
2 made by the witness subsequent to the offense was the
3 product of his own recollection? You may take into
4 account both the strength of the identification, and
5 the circumstances under which the identification was
6 made.

7 If the identification by the witness may have
8 been influenced by the circumstances under which the
9 defendant was presented to him for identification, you
10 should scrutinize the identification with great care.
11 You may also consider the length of time that lapsed
12 between the occurrence of the crime and the next
13 opportunity of the witness to see defendant, as a
14 factor bearing on the reliability of the identification.

15 (You may also take into account that an
16 identification made by picking the defendant out of
17 a group of similar individuals is generally more re-
18 liable than one which results from the presentation
19 of the defendant alone to the witness.)

20 (3) You may take into account any occasions in
21 which the witness failed to make an identification of
22 defendant, or made an identification that was in-
23 consistent with his identification at trial.)

24 (4) Finally, you must consider the credibility
25 of each identification witness in the same way as any

211

Charge of the Court

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

other witness, consider whether he is truthful, and consider whether he had the capacity and opportunity to make a reliable observation on the matter covered in his testimony.

The burden of proof is on the prosecution with reference to every element of the crime charged and this burden includes the burden of proving beyond reasonable doubt the identity of the defendant as the perpetrator of the crime charged.

Opinion Evidence -- Expert Witness

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses". Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state an opinion as to relevant and material matter, in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion

22 1

2 are not sound, or that the opinion is outweighed by
3 other evidence, you may disregard the opinion entirely.

4

Evidence - Handwriting.

5

6

7

8

Where the genuineness of handwriting is in issue,
any proved or admitted handwriting of a person may be
received in evidence to be used as a specimen, for
comparison with the handwriting in dispute.

9

10

11

12

13

14

15

16

17

18

Witnesses claiming special qualifications as
experts on handwriting have testified as to certain
handwriting in dispute. A handwriting expert may
state his opinion as to whether documents or signatures
in evidence were written by the same person, and whether
they are genuine, disguised or altered, by comparing the
handwriting in dispute with a proven specimen. You
have the right to determine the weight to be given
such expert testimony.

19

20

21

22

23

24

25

Similar Acts

The Government has offered evidence that the
defendants on trial robbed the Kilbourn State Bank in
Milwaukee, Wisconsin on March 11, 1976. You will
recall that this robbery is charged as one of the
overt acts in the indictment, and I have already
defined and explained the significance of overt acts.

You may also consider evidence of the Kilbourn
robbery as proof of a similar act. You may not conclude

23

1

Charge of the Court

2

3

4

5

6

7

8

9

10

from proof of a similar act that a defendant has a bad character and that, therefore, he committed the crimes charged, but you may use evidence of a similar act as evidence of the identity of the perpetrators of the crimes charged in the indictment, of a common scheme or plan, of the absence of mistake or accident, or evidence of intent. You may consider evidence of a similar act if you are convinced beyond a reasonable doubt that the act was committed.

11

United States v. Ravich, 421 F.2d 1196,

12

1205 (2d Cir.) cert. denied 400 U.S. 834 (1970).

13

2 J. Wigmore, Evidence Section 410, 416 (3d ed

14

1940)

15

Federal Rules of Evidence, Rule 404(b).

16

Effect of Failure of Accused to Testify:

17

"The law does not compel a defendant

18

in a criminal case to take the witness stand and

19

testify, and no presumption of guilt may be raised,

20

and no inference of any kind may be drawn from the

21

failure of a defendant to testify.

22

As stated before, the law never imposes upon

23

a defendant in a criminal case the burden or duty of

24

calling any witnesses or producing any evidence.

25

Evidence in the Case - Stipulations -

Inferences Permitted

24

Charge of the Court

1 The evidence in the case consists of the sworn
2 testimony of the witnesses, regardless of who may have
3 called them; and all exhibits received in evidence,
4 regardless of who may have produced them; and all facts
5 which may have been admitted or stipulated.
6

7 Statements and arguments of counsel are not
8 evidence in the case, unless made as an admission
9 or stipulation of fact. When the attorneys on both
10 sides stipulate or agree as to the existence of a fact,
11 however you must, unless otherwise instructed, accept
12 the stipulation as evidence, and regard that fact as
13 proved.

14 Any evidence as to which an objection was sus-
15 tained by the Court, and any evidence ordered stricken
16 by the Court, must be entirely disregarded.

17 Anything you may have seen or heard outside the
18 courtroom is not evidence, and must be entirely dis-
19 regarded.

20 You are to consider only the evidence in the
21 case. But in your consideration of the evidence, you
22 are not limited to the bald statements of the witnesses.
23 In other words, you are not limited solely to what
24 you see and hear as to the witnesses testify. You are
25 permitted to draw, from facts which you find have been

25

Charge of the Court

2

proved, such reasonable inferences as you feel are justified in the light of experience.

3

4

Judging the Evidence.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

Jury's Recollection Controls

24

25

If any reference by the Court or by counsel to matters of evidence does not coincide with your own

Charge of the Court

recollection, it is your recollection which should control during your deliberations.

Punishment

Now, under your oath as jurors you cannot allow a consideration of the punishment which may be inflicted upon the defendant, if convicted, to influence your verdict in any way or in any sense enter into your deliberations.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence, and the evidence alone, and you must not be influenced by any assumption, conjecture, or sympathy, or any inference not warranted by the facts until proven to your satisfaction.

From Judge Weinfeld's charge in United States v. Bruswitz, aff'd 219 F.2d 59, 62-3(2d Cir. 1955) cert denied., 349 U.S. 913.

Exclude Sympathy and Antipathy.

In reaching your verdict, you are not to be affected by sympathy or antipathy for any of the

Charge of the Court

28 1 parties, what the reaction of the parties or of the
2 public to your verdict may be, whether it will please
3 or displease anyone, be popular or unpopular or indeed,
4 any consideration outside the case as it has been
5 presented to you in this courtroom.
6

7 You should consider only the evidence -- both
8 the testimony and the exhibits -- find the facts
9 from what you consider to be the believable evidence,
10 and apply the law as I now give it to you to those
11 facts. Your verdict will be determined by the con-
12 clusion thus reached, no matter whom the verdict
13 helps or hurts.

Unanimous Verdict

14
15 Now, in this type of case there must be a
16 unanimous verdict, that means all twelve of you must
17 agree, and it goes without saying, that it becomes
18 incumbent upon you to listen to one another and to
19 argue out the points among yourselves in order to
20 determine in good conscience whether your fellow
21 jurors' argument is one commensurate with yours or
22 whether at least you can with good conscience agree
23 with him. You have no right to stubbornly and idly sit
24 by and say, "I am not talking to anyone," "I am not
25 going to discuss it," because people with common sense

28

Charge of the Court

2

and the ability to reason must communicate, they

3

must communicate their thoughts. So, anything, which

4

appears in the record and about which one of you may

5

not agree -- talk it out amongst yourselves and

6

then if you can't agree as to what is in the record,

7

well, you can ask the Court to have that portion of

8

the testimony read back to you. You may do so by knock-

9

ing on the door and giving a note in writing to the U.S.

10

Marshal who will then present it to the Court, and

11

I will then bring you into the courtroom.

12

(continued next page)

13

14

15

16

17

18

19

20

21

22

23

24

25

5PM2
JB/JW

1 The Foreman will preside over your
2 deliberations and will be your spokesman here in
3 Court.

4 As to the form of verdict: As to Count One
5 as to Charles Williams, not guilty or guilty.

6 As to Count One as to Robert McGray, not
7 guilty or guilty.

8 As to Count Two as to Charles Williams, not
9 guilty or guilty.

10 As to Count Two as to Robert McGray, not
11 guilty or guilty.

12 As to Count Three, as to Charles Williams,
13 not guilty or guilty.

14 As to Count Three as to Robert McGray,
15 not guilty or guilty.

16 As to Count Four as to Charles Williams,
17 not guilty or guilty.

18 As to Count Four as to Robert McGray, not
19 guilty or guilty.

20 As to Count Five as to Mr. Charles Williams,
21 not guilty or guilty.

22 As to Count Five as to Robert McGray, not
23 guilty or guilty.

24 Now, in connection with your deliberations,
25 I shall send in for you to use a copy of the

3PM
MP/JW

1 (The following took place outside the presence
2 of the jury.)

3 MR. LOMBARDINO: May I have a moment, your
4 Honor?

5 THE COURT: Surely.

6 (Pause.)

7 THE COURT: Is there something?

8 MR. LOMBARDINO: For the purpose of the record,
9 I would respectfully object to any testimony concern-
10 ing a substantive crime that took place in the State
11 of Wisconsin and now that the witness has so testified
12 I move for the declaration of a mistrial.

13 MR. BING: I join that motion.

14 THE COURT: Mr. Carter?

15 MR. CARTER: The substantive offense of
16 a bank robbery in Wisconsin is an overt act of the
17 conspiracy alleged, your Honor.

18 THE COURT: Number Three.

19 MR. CARTER: I believe the testimony has
20 established so far, at least established prima facie,
21 that there was a conspiracy to rob banks in general
22 and among the banks that were robbed was the bank
23 outside of the Eastern District of New York which was
24 named as an overt act but not a substantive count
25 in the indictment.

2 1 I see no reason at all that testimony regarding
2 that bank robbery should be stricken at this time.

3 MR. LOMBARDINO: The reason for the objection
4 is the probative value does not outweigh the
5 prejudicial effect on the jury.

6 THE COURT: It's one of the overt acts. The
7 Government may prove it as part of the conspiracy
8 if that is the Government's position.

9 Anything, Mr. Bing?

10 MR. BING: The jury is under the impression
11 these men are being tried for a crime that happened
12 in Wisconsin.

13 THE COURT: It's right in the indictment. I
14 read that to them.

15 You say that is the impression they have?

16 MR. BING: Yes.

17 THE COURT: There is no reason I have to feel
18 that is the impression the jury has. That is part
19 of the conspiracy. And that is part of what the
20 Government has to prove as part of the conspiracy.

21 Yes sir?

22 MR. BING: No further comment.

23 THE COURT: The application for the declaration
24 of a mistrial is denied.

25 Bring in the jury.

UNITED STATES V. CHARLES WILLIAMS.

77-1454

CERTIFICATE OF SERVICE

I certify that on February 6, 1978 I had mailed one
copy of the Appendix to Brief for Charles Williams
 to David Trager, Esq. 225
Cadman Plaza East, Brooklyn, N.Y. 11201

Donald E. Nawi
Donald E. Nawi